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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-208 ✓

In re Applications of

UNITED EDUCATIONAL File No. BRED-910401B8
BROADCASTING, INC.

For Renewal of License
of Noncommercial Educational
Station WBMF-FM
Telford, Pennsylvania

and

BUX-MONT File No. BPED-910701MA
EDUCATIONAL RADIO
ASSOCIATION

For a Construction Permit
for a New Noncommercial
Educational FM Station
Doylestown, Pennsylvania

HEARING DESIGNATION ORDER

Adopted: September 1, 1992; Released: September 21, 1992

By the Chief, Audio Services Division, Mass Media Bureau:

1. The Commission, by the Chief, Audio Services Division, Mass Media Bureau, has before it for consideration the following mutually exclusive applications: (a) the application of United Educational Broadcasting, Inc. (United) for renewal of license of Noncommercial Educational Station WBMF-FM, Telford, Pennsylvania, and (b) the application of Bux-Mont Educational Radio Association (Bux-Mont) for a construction permit for a new Noncommercial Educational FM station on Channel 219A at Doylestown, Pennsylvania.¹

2. *Bux-Mont*. Our engineering review reveals a discrepancy between Bux-Mont's application and the Commission's files with respect to the height of Bux-Mont's proposed tower. Bux-Mont proposes to mount its antenna on an existing tower. According to Bux-Mont's application, the tower stands 97 meters above ground and 250 meters above mean sea level. The Commission's files state, however, that the tower is 100 meters above ground and

253 meters above mean sea level. This matter requires clarification. Therefore, Bux-Mont will be required to submit a clarifying amendment to the presiding Administrative Law Judge within 30 days of release of this Order.

3. Section II, Item 8, of FCC Form 340 (May 1989) requires that an applicant provide the name(s) and residence address(es) of the parties to the application. Bux-Mont has not completed this item correctly in that it fails to provide the number and street of the residence addresses of its Trustees. Accordingly, Bux-Mont must submit an amendment which provides all the information required by this item to the presiding Administrative Law Judge within 30 days of release of this Order.

4. Our engineering study indicates that Bux-Mont failed to address the matter of how it proposes to resolve any RF exposure to workers on its tower. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Bux-Mont may have failed to comply with the environmental criteria set forth in the *Report and Order in Gen. Docket No. 79-163*, 51 Fed. Reg. 14999 (April 12, 1986). See also, *Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. Section 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since Bux-Mont failed to indicate how workers engaged in maintenance and repair would be protected from exposure to levels exceeding the ANSI guidelines, it will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally, OST Bulletin No. 65 (October 1985) entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation" at 28. Therefore, Bux-Mont will be required to file, within 30 days of receipt of the *Hearing Designation Order*, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of this case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.* 71 FCC 2d 2289 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the EA that Bux-Mont's proposal will not have a significant impact on the quality of the human environment, the contingent environmental issue specified below shall be deleted and the presiding judge shall thereafter not consider the environmental effects of Bux-Mont's proposal. See 47 C.F.R. § 1.1308(d).

¹ Although the applications are apparently for two different communities, the interfering contour of each application overlaps the protected contour of the other. Since the Bux-Mont application was timely filed and grant of the United application

would effectively preclude the grant of the Bux-Mont application, they are mutually exclusive and must be consolidated for hearing. *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

5. Bux-Mont requests a waiver of 47 C.F.R. §73.1125 (main studio rule) to operate its proposed station as a satellite of Station WRDV, Warminster, Pennsylvania. In support of its waiver request, Bux-Mont states that an STL will be installed to permit separate programming to Doylestown; that the ability to do live remote broadcasts already exists and will be used from time to time to feed the Doylestown transmitter; that leaders of the Doylestown community will be regularly interviewed to ascertain issues and needs which require attention; and that a toll-free number will be established. Additionally, since the applicant functions with a volunteer staff, some of whom come from the Doylestown area, it is anticipated that they will supplement the station's ascertainment of needs and issues. According to Bux-Mont, operating in this way will allow valuable resources to be devoted towards providing service unique to Doylestown with better results and quality of service, especially localized service. Bux-Mont posits that such centralized operation will insure the effective and efficient provision of programming that addresses Doylestown's educational, civic, cultural and community concerns.

6. The Commission has stated that it recognizes:

the benefits of centralized operations for noncommercial educational stations, given the limited funding available to these stations, and we have granted waivers to state and regional public television and radio networks to operate 'satellite' stations that do not necessarily meet the requirements of a main studio. These stations, however, have not been permitted to ignore local service obligations, and waivers generally have been granted only upon a showing that the local community would be served.

See *Memorandum Opinion and Order re Amendment of Section 73.1125*, 3 FCC Rcd 5024 at 5026-27 (1988).

In the instant case, it appears that Bux-Mont's proposal is designed to insure that local needs of Doylestown will be met. Accordingly, Bux-Mont's waiver request will be granted.

7. *Other matters.* The applicants have not indicated whether an attempt has been made to negotiate a share-time arrangement. Therefore an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560 (1978). In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before or after the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time arrangement between themselves.

8. The respective proposals are for different communities. United and Bux-Mont do not serve substantial areas in common. Consequently, it will be necessary to determine, pursuant to Section 307(b) of the Communications

Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio services.

9. Except as indicated above, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding upon the issues specified below.

10. Accordingly, IT IS ORDERED, That pursuant to § 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Bux-Mont in which it is concluded that its proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§1.1301-1319.

2. To determine, (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and populations served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the application should be granted, if any.

11. IT IS FURTHER ORDERED, That, pursuant to paragraph 2 above, Bux-Mont shall submit an amendment clarifying its tower height with the presiding Administrative Law Judge within 30 days of the release of this Order.

12. IT IS FURTHER ORDERED, That, pursuant to paragraph 3 above, Bux-Mont shall submit an amendment which contains the information required by Section II, Item 8 of FCC Form 340 to the presiding Administrative Law Judge within 30 days of the release of this Order.

13. IT IS FURTHER ORDERED, That, pursuant to paragraph 4 above, within 30 days of the release of this Order, Bux-Mont shall submit the required environmental assessment required by § 1.1311 to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

14. IT IS FURTHER ORDERED, That Bux-Mont's request for a waiver of 47 C.F.R. 73.1125 is GRANTED.

15. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communica-

tions Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street N.W., Washington D.C. 20554.

16. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice, as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau